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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,938	02/22/2002	Stacey A. Infantino	HANN-0002	6412
23550	7590	08/11/2004		
HOFFMAN WARNICK & D'ALESSANDRO, LLC 3 E-COMM SQUARE ALBANY, NY 12207			EXAMINER STEPHENS, JACQUELINE F	
			ART UNIT	PAPER NUMBER

3761

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/081,938

Applicant(s)

INFANTINO ET AL.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on Amendment of 5/17/04 RCE filed 7/13/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 5/17/04 have been fully considered but they are not persuasive. Applicant argues Kitaoka does not disclose the invention as claimed in that the core of the Kitaoka diaper does not extend to the longitudinally outer edge of the diaper and also does not extend to the transversely opposite side edges of the diaper. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the aforementioned features upon which applicant relies are not recited in the rejected claim(s). As indicated in the rejection mailed 3/18/04, applicant has not specifically defined the front or rear portion with regard to the dimensions of the incontinence article, or relative to other elements in the structure. Thus, the examiner interprets the front and rear portion to be any portion of the front and rear of the incontinence article. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to claims 2, 8 and 20, applicant's argument that the Kitaoka diaper that is worn about the waist of the user is not equivalent to the front guard extending vertically from the front portion to a middle chest area of a user is not persuasive. As stated above, applicant has not specifically defined the front or rear portion with regard to the dimensions of the incontinence article, or relative to other elements in the

Art Unit: 3761

structure. Thus, the examiner interprets the front and rear portion to be any portion of the front and rear of the incontinence article.

With respect to claims 3, 8, and 14, applicant's argument that the Kitaoka diaper that is worn about the waist of the user is not equivalent to the back guard extending vertically from the back portion to a middle chest area of a user is not persuasive.

Firstly, it appears applicant intended to argue the back guard extends to a middle back area of a user. Secondly, as stated above, applicant has not specifically defined the front or rear portion with regard to the dimensions of the incontinence article, or relative to other elements in the structure. Thus, the examiner interprets the front and rear portion to be any portion of the front and rear of the incontinence article.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-6, 8-10, 12-17, 19-23, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Kitaoka et al. USPN 6425889.

As to claim 1, Kitaoka discloses an incontinence article, comprising: a front portion **F**; a rear portion **R** joined to the front portion; and a bumper **6** extending along an entire edge of at least one of the front portion and the rear portion. The foamed member **6** of Kitaoka is considered a bumper in that Kitaoka uses the foamed member to improve the cushioning property of the diaper and contribute to the comfort of the user (col. 5, lines 13-21).

As to claims 2 and 4, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4). The liquid-resistant sheet **5** of Kitaoka is considered a guard in that Kitaoka discloses the sheet and bumper form a pocket, which is used to prevent body wastes from leaking outward from front and rear waist regions of a diaper (col. 1, lines 34-38)

As to claim 3, Kitaoka discloses a back guard **5** extending from the rear portion, wherein the bumper is attached along a top edge of the back guard (Figures 2 and 5).

As to claim 5, see Figure 1.

As to claim 6, see Figure 4.

As to claim 8, Kitaoka discloses an incontinence article, comprising: a front portion **F** having a front guard extending therefrom; a rear portion **R** having a back guard **5** extending therefrom; a crotch portion **21** between the front portion and the rear

Art Unit: 3761

portion; and a bumper **6** extending along an entire edge of at least one of the front guard **5** and the back guard **5** (Figures 1, 2, and 5; col. 4, line 66 through col. 5, line 4 – where Kitaoka discloses the guard **5** and bumper **6** are disposed not only in the rear waist region **22**, but also in the front waist region **20**).

As to claims 9 and 13, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 10, see Figures 2 and 5.

As to claim 12, see Figure 1.

As to claim 14, Kitaoka discloses an incontinence article, comprising: a front portion **F**; a rear portion **R** having a back guard **5** extending therefrom; a crotch portion **21** between the front portion and the rear portion; and a bumper **6** extending along an entire edge of at least one of the front portion and the back guard.

As to claim 15, see Figure 1.

As to claim 16, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 17, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 19, see Figure 4.

As to claim 20, Kitaoka discloses an incontinence article, comprising: a front portion **F** having a front guard **5** extending therefrom; a rear portion **R**, a crotch portion **21** between the front portion and the rear portion; and a bumper **6** extending along an entire edge of at least one of the front guard **5** and the rear portion (Figures 1, 2, and 5; col. 4, line 66 through col. 5, line 4 – where Kitaoka discloses the guard **5** and bumper **6** are disposed not only in the rear waist region **22**, but also in the front waist region **20**).

As to claim 21, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 22, see Figure 1.

As to claim 23, Kitaoka discloses a front guard **5** and a bumper **6** in the front portion (col. 4, line 66 through col. 5, line 4).

As to claim 25, see Figure 1.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 7, 11, 18, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kitaoka. Kitaoka discloses the present invention substantially as claimed. However, Kitaoka does not disclose the bumper is a roll. It would have been an obvious matter of design choice to provide the article of Kitaoka with a roll-shaped bumper, since such a modification would have involved a mere change in the shape of the component. A change in shape is generally within the level of one of ordinary skill in the art.




Art Unit: 3761


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703)305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jacqueline F Stephens  
Examiner  
Art Unit 3761



August 6, 2004